

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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LESLIE E. WAGENHEIM,

Plaintiff

-vs-

NATURAL SCIENCE INDUSTRIES,  
LTD.,

Defendant.  
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: CASE NO. 1:04 CV 0239  
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:  
: Plaintiff  
: MEMORANDUM AND ORDER  
: GRANTING PLAINTIFF'S UNOPPOSED  
: MOTION FOR ATTORNEY FEES AND  
: COSTS PURSUANT TO FED. R. CIV.  
: P. 54(d).  
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UNITED STATES DISTRICT JUDGE LESLEY WELLS

Before the Court is plaintiff Leslie E. Wagenheim's ("Wagenheim") Motion for Costs, Expenses and Attorneys' Fees Pursuant to Civil Rule 54(d)," (Docket 76), and "Plaintiff's Application for Taxation of Costs" (Docket 75). The defendant has not responded to either motion. On 26 January 2007 the Court rendered final judgment in this matter pursuant to Fed. R. Civ. P. 55, granting Mr. Wagenheim's Motion for Default Judgment against Defendant Natural Science Industries, Ltd. ("NSI"). (Dockets 73, 74).

As the prevailing party, Mr. Wagenheim has made a timely return to the Court seeking an aggregate amount of \$46,670.14 in attorney fees, costs and expenses, pursuant to Fed. R. Civ. P. 54(d). Specifically, Mr Wagenheim seeks attorney fees in the amount of \$41,037.50, litigation expenses in the amount of \$2,218.19, and costs incurred pursuant to 28 U.S.C. § 1920, in the amount of \$4,384.45. (Dockets 75, 76) For the reasons discussed below, the Court will grant the plaintiff's motion.

This Court granted Mr. Wagenheim's Motion for Summary Judgment on 27 September 2006 on Count I of his Amended Complaint. (Dockets 65, 66). During the pendency of this litigation Mr. Wagenheim also received judgment in his favor in the Ohio Action on 10 November 2005, seeking indemnification against NSI for the defendant's failure to adhere to the parties' Asset Purchase Agreement. (Docket 76; Affidavit of Leslie Wagenheim, ¶ 7; Parkway Business Plaza Limited Partnership v. Custom Zone, Inc. et al., Case No. CV 04 544377). This Court recognized the judgment of the Ohio Action in denying Mr. Wagenheim's Motion for Summary Judgment with regard to Counts III and IV of the Amended Complaint on the grounds of *res judicata*. Finally, on 26 January 2007, this Court granted Mr. Wagenheim's Motion for Default Judgment against NSI on Count II of the Amended Complaint. (Docket 73).

All four causes of action arose out of the parties' Asset Purchase Agreement. Pursuant to that Agreement, NSI agreed to indemnify and hold Mr. Wagenheim "harmless from and against all claims, liabilities . . . and all costs and expenses including reasonable attorney's fees incurred in connection with" the indemnification. (Docket 76, p. 3). Upon a review of the affidavits provided, the itemizations of time, and the hourly rates applied, the Court concludes the proposed fees in this matter are fair and reasonable and consistent with industry standards for attorneys with comparable experience in the Cleveland area.

As the prevailing party pursuant to this Court's 27 September 2006 Order, its 26 January 2007 Judgment, and the 10 November 2005 judgment in the State Action, Mr. Wagenheim is entitled to the reasonable attorney fees, costs and expenses incurred in

this action. Accordingly, NSI shall remit the sum of \$46,670.14 to Mr. Wagenheim for the incurred fees, costs and expenses.

IT IS SO ORDERED.

/s/Lesley Wells  
UNITED STATES DISTRICT JUDGE

Dated: 4 April 2007